



Ernie J. Duffin
Director

40-87-01
The Commonwealth of Massachusetts

*Office of
Campaign & Political Finance
One Ashburton Place, Boston 02108
727-8352*

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AO-87-01

Mr. Nicholas A. Rizzo
Benco, Inc.
One Elm Square, Suite 3B
P.O. Box 619
Andover, MA 01810

Dear Mr. Rizzo:

This is in response to your recent request for an advisory opinion concerning the application of G.L.c. 55, the campaign finance law, to a testimonial event you plan to host for a retiring member of the Massachusetts Legislature.

You state that the individual to be honored has a political committee and intends to maintain that committee. You do not wish, however, to designate any receipts to that committee nor is that committee the sponsor of this event. You also wish that the proceeds of this event be used to sustain a gift of some kind directly to the honored individual.

M.G.L.c.55, the campaign finance law, contains several provisions which are applicable to the issue presented. Section 1 provides that,

"Notwithstanding any other provisions of this chapter, any receipt or disbursement of any money or anything of value by an individual, or person acting on behalf of said individual, which is not otherwise a 'contribution' or 'expenditure' as defined in this section, resulting from any purchases from said individual, or any person acting on behalf of said individual, whether through the device of tickets, advertisements, or otherwise, for any fund-raising activity, including a testimonial, held on behalf of said individual, regardless of the purpose of said activity, shall be deemed to be a 'contribution' or 'expenditure' if said individual: (1) is a candidate in accordance with the provisions of clauses (1) or (2) of the definition of 'candidate' at the time of said receipt or disbursement; (2) holds elective public office, whether elected or appointed to such office, at the time of said receipt or disbursement, and thereby becomes a candidate in accordance with the provisions of clause (3) of said definition; or (3) becomes a candidate in accordance with

said clauses (1) or (2) of said definition subsequent to such receipt or disbursement, and shall be reported as a contribution or an expenditure in accordance with the provisions of section eighteen and nineteen."

You have said that the individual in question will not be holding elective office at the time of any receipt or disbursement relative to the event. Therefore, this individual would not be subject to this paragraph under clause (2). This event would be subject to this paragraph, however, if the individual is, or becomes, a candidate under clause (1) or (2) of the definition of candidate.

Chapter 55 defines candidate, in relevant part as,

"any individual who seeks nomination of election to public office, whether or not such individual is nominated or elected. For the purpose of this chapter, an individual shall be deemed to be seeking nomination or election to such office if he has (1) received a contribution or made an expenditure, for the purpose of influencing his nomination or election to such office, whether or not the specific public office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made, or (2) taken the action necessary under the laws of the commonwealth to qualify himself for nomination or election to such office..."

Clause (2) of this definition was intended to cover individuals who have filed nomination papers, or taken some other legal action to declare a candidacy for public office. The individual you have described would, therefore, not be covered by this section.

Clause (1) of this definition applies to an individual who, while not necessarily an incumbent, has received a contribution or made an expenditure for the purpose of influencing his nomination or election, or has given his consent for another individual or a committee to do so. This provision was intended to ensure that an individual was not raising funds as a candidate while, at the same time, raising funds which did not comply with the campaign finance law. This would circumvent both the letter and the spirit of the campaign finance law. An individual who is receiving contributions or making expenditures is clearly a "candidate" under this clause. Furthermore, since the establishment of a political committee requires the consent of the candidate, the continued existence of such a committee, whether or not there is current campaign finance activity, creates a strong presumption that a "candidacy" exists. This presumption could be rebutted only by significant facts which might compel a determination that an individual is not a candidate under the campaign finance law, notwithstanding the existence of a political committee. For instance, an individual who has not received any contributions or made any expenditures over a period of several years may not be a "candidate" under the campaign finance law. However,

this determination could only be made after a careful consideration of this factor as well as other relevant factors.

The individual described in your letter has just completed his term of office. He has a political committee with funds and will continue to maintain that committee. These facts compel the conclusion that this individual is and will continue to be a "candidate" under the campaign finance law. Therefore, the provision of the law concerning testimonials, as cited above, would apply to this individual. Any testimonial event held for this candidate must run through his political committee. All receipts and all disbursements relative to this event must be reported by his political committee. This activity is subject to all applicable provisions of the campaign finance law and rules promulgated thereunder, including the restriction on the use of campaign funds for the candidate's or any other person's personal use.

Please feel free to contact us if you have any further questions.

Very truly yours,

A handwritten signature in cursive script that reads "Dennis J. Duffin".

Dennis J. Duffin
Director

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